

Residency Administrative Regulation Amendment

Action: The staff recommends that the council approve an amendment to an existing administrative regulation entitled *13 KAR 2:045 Determination of residency status for admission and tuition purposes* (copy attached) and direct that the staff file the administrative regulation with the Legislative Research Commission and make such changes in the administrative regulation as shall be necessary as a result of the statutory review process.

The residency administrative regulation needs to be revised to clarify issues related to:

- Distinguishing between residents and nonresidents in areas that have arisen since the administrative regulation was last amended.
- The effect of the marriage of a nonresident to a Kentucky resident.
- Changes in the immigration law and its effect on the status of students.

These changes will result in an easier determination of residency status for prospective and current students and in the correct classification of students for the purpose of tuition and fee assessment and program admissions.

The attachment presents the proposed changes to the residency administrative regulation.

The administrative regulation review process takes place over a four-to-six month period and requires two public hearings. The administrative regulation will be filed with the Legislative Research Commission prior to August 15. The projected completion date for the process is October 15.

The council staff proposes incorporating additional changes that may result from the public hearings into the council's administrative regulation. The final regulation, with any additional amendments, will be presented to the council at the conclusion of the review process.

Staff preparation by
Dennis Taulbee and Sherri Noxel

1 COUNCIL ON POSTSECONDARY EDUCATION

2 (Amendment)

3 13 KAR 2:045. Determination of residency status for admission and tuition assessment purposes.

4 RELATES TO: KRS Chapter 13B, 164.020, 164.030, 164A.330(9)

5 STATUTORY AUTHORITY: KRS 164.020(8)

6 NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.020(8) requires the Council
7 on Postsecondary Education to determine tuition and approve the minimum qualifications for admission
8 to a state-supported postsecondary education institution and authorizes the Council to set different tui-
9 tion amounts for residents of Kentucky and for nonresidents. This administrative regulation establishes
10 the procedure and guidelines for determining the residency status of a student who is seeking admission
11 to, or who is enrolled at, a state-supported postsecondary education institution.

12 Section 1. Definitions. (1) "Academic term" means a division of the school year during which a
13 course of studies is offered, and includes a semester, quarter, or single consolidated summer term as
14 defined by the institution.

15 (2) "Continuous enrollment" means enrollment in a state-supported postsecondary education
16 institution at the same degree level for consecutive terms, excluding summer term, since the beginning of
17 the period for which continuous enrollment is claimed unless a sequence of continuous enrollment is
18 broken due to extenuating circumstances beyond the student's control, including serious personal illness
19 or injury, or illness or death of a parent.

20 (3) "Degree level" means enrollment in a course or program which could result in the award

1 of a:

2 (a) Certificate, diploma or other program award at an institution;

3 (b) Baccalaureate degree or lower including enrollment in a course by a nondegree-seeking
4 postbaccalaureate student;

5 (c) Graduate degree or graduate certification other than a first-professional degree in law, medi-
6 cine, dentistry or "Pharm. D"; or(d) Professional degree in law, medicine, dentistry, or "Pharm. D".

7 (4) "Demonstration of Kentucky domicile and residency" means the presentation of documented
8 information and evidence sufficient to prove by a preponderance of the evidence that a person is domi-
9 ciled in Kentucky and is a resident of Kentucky.

10 (5) "Dependent person" means a person who cannot demonstrate financial independence from
11 parents or persons other than a spouse and who does not meet the criteria established in Section 5 of
12 this administrative regulation.

13 (6) "Determination of residency status" means the decision of a postsecondary education institu-
14 tion that may include a formal hearing that results in the classification of a person as a Kentucky resident
15 or as a nonresident for admission and tuition assessment purposes.

16 (7) "Domicile" means a person's true, fixed, and permanent home and is the place where the
17 person intends to remain, and to which the person expects to return if absent without intending to estab-
18 lish a new domicile elsewhere.

19 (8) "Full-time employment" means continuous employment for at least forty-eight (48) weeks at
20 an average of at least thirty (30) hours per week.

21 (9) "Independent person" means a person who demonstrates financial independence from par-
22 ents or persons other than a spouse and who can meet the criteria established in Section 5 of this ad-
23 ministrative regulation.

24 (10) "Institution means an entity defined in KRS 164.001(10) if the type of institution is not ex-

1 pressly stated and includes the Kentucky ~~[Commonwealth]~~ Virtual University, ~~the Council on Postsec-~~
2 ~~ondary Education, and the Kentucky Higher Education Assistance Authority.~~

3 (11) ~~["Kentucky residency"]~~ or "Kentucky resident" means ~~[the result of]~~ a determination by an
4 institution that a person is ~~domiciled in and is a~~ resident of Kentucky as determined by this administrative
5 regulation.

6 (12) "Nonresident" means a person who is domiciled outside of Kentucky or who currently
7 maintains legal residence outside Kentucky or who ~~is not a Kentucky resident within the meaning of~~
8 ~~[has not met the criteria for Kentucky residency established in]~~ this administrative regulation.

9 (13) "Preponderance of the evidence" means the greater weight of evidence, or evidence which
10 is more credible and convincing to the mind.

11 (14) "Parent" means one (1) of the following:

12 (a) A person's father or mother; or

13 (b) A court-appointed legal guardian if:

14 1. The guardianship is recognized by an appropriate court within the United States;

15 2. There was a relinquishment of the rights of the parents; and

16 3. The guardianship was not established primarily to confer Kentucky residency on the person.

17 (15) "Residence" ~~[or "residency"]~~ means the place of abode of a person and the place where
18 the person is physically present most of the time for a noneducational purpose in accordance with Sec-
19 tion 3 of this administrative regulation.

20 (16) "Student financial aid" means all forms of payments to a student if one (1) condition of re-
21 ceiving the payment is the enrollment of the student at the institution.

22 (17) "Sustenance" means living expenses including room, board, maintenance, transportation,
23 and also may include educational expenses including tuition, fees, books, and supplies.

24 Section 2. Scope. (1) State-supported postsecondary education institutions were established

1 and are maintained by the Commonwealth of Kentucky primarily for the benefit of qualified residents of
2 Kentucky. The substantial commitment of public resources to postsecondary education is predicated on
3 the proposition that the state benefits significantly from the existence of an educated citizenry. As a mat-
4 ter of policy, access to postsecondary education shall be provided so far as feasible at reasonable cost
5 to an individual who is domiciled in Kentucky and who is a resident of Kentucky.

6 (2) The Council on Postsecondary Education ~~may require~~ [requires] a student who is neither
7 domiciled in nor a resident of Kentucky to meet higher admission standards and to pay a higher level of
8 tuition than resident students.

9 (3) This administrative regulation applies to all student residency determinations regardless of
10 circumstances, including ~~residency determinations made by the state-supported institutions for prospec-~~
11 ~~tive and currently enrolled students;~~ the Southern Regional Education Board contract spaces; reciprocity
12 agreements, where appropriate; the Kentucky [Commonwealth] Virtual University; [and] academic
13 common market programs; ~~the Kentucky Educational Excellence Scholarship program; and, other state~~
14 ~~student financial aid programs, as appropriate.~~

15 Section 3. Determination of Residency Status; General Rules. (1) A determination of residency
16 shall include:

17 (a) An initial determination of residency status by an institution ~~during~~ the admission process or
18 upon enrollment in an institution for a specific academic term, or for admission into a specific academic
19 program;

20 (b) A reconsideration of a determination of residency status by an institution based upon a
21 changed circumstance; and

22 (c) A formal hearing conducted by an institution upon request of a student after other
23 administrative procedures have been completed.

24 (2) An initial determination of residency status shall be based upon:

1 (a) The facts in existence when the credentials established by an institution for admission for a
2 specific academic term have been received and during the period of review by the institution;

3 (b) Information derived from admissions materials;

4 (c) Other materials required by an institution and which are consistent with this administrative
5 regulation; or

6 (d) Other information available to the institution from any source.

7 (3) An individual seeking a determination of Kentucky residency status shall demonstrate that
8 status by a preponderance of the evidence.

9 (4) A determination of residency status shall be based upon verifiable circumstances or actions.

10 (5) Evidence and information cited as the basis for Kentucky domicile and residency shall ac-
11 company the application for a determination of residency status.

12 (6) A student classified as a nonresident shall retain that status until the student is officially re-
13 classified by an institution.

14 (7) A student may apply for a review of a determination of residency status once for each aca-
15 demic term.

16 (8) If an institution has information that a student's residency status may be incorrect, the institu-
17 tion shall review and determine the student's correct residency status.

18 (9) If the Council on Postsecondary Education has information that an institution's determination
19 of residency status for a student may be incorrect, it may require the institution to review the circum-
20 stances and report the results of that review.

21 (10) An institution shall impose a penalty or sanction against a student who gives incorrect or
22 misleading information to an institutional official, including payment of nonresident tuition for each aca-
23 demic term for which resident tuition was assessed based on an improper determination of residency
24 status. The penalty may also include:

1 (a) Student discipline by the institution through a policy written and disseminated to students; or

2 (b) Criminal prosecution.

3 Section 4. Presumptions Regarding Residency Status. (1) In making a determination of resi-
4 dency status, it shall be presumed that a person is a nonresident if:

5 (a) A person is, or seeks to be, an undergraduate student and admissions records show the stu-
6 dent to be a graduate of an out-of-state high school ~~within five (5) years prior to a request for a deter-~~
7 ~~mination of residency status;~~

8 (b) A person's admissions records indicate the student's residence to be outside of Kentucky at
9 the time of application for admission;

10 (c) A person moves to Kentucky primarily for the purpose of enrollment in an institution;

11 (d) A person moves to Kentucky and within twelve (12) months enrolls at an institution more
12 than half time; or

13 (e) A person has a continuous absence of one (1) year from Kentucky.

14 (2) A presumption arising from subsection (1) of this section shall be overcome by ~~presentation~~
15 ~~of evidence that is sufficient to demonstrate that a person is domiciled in and is a resident of Kentucky~~
16 ~~[a demonstration of Kentucky domicile and residency].~~

17 Section 5. Determination of Whether a Student is Dependent or Independent. (1) In a determi-
18 nation of residency status, an institution shall first determine whether a student is dependent or inde-
19 pendent. This provision is predicated on the assumption that a dependent person lacks the financial abil-
20 ity to live independently of the person upon whom the student is dependent and therefore lacks the abil-
21 ity to form the requisite intent to establish domicile.

22 (2) In determining the dependent or independent status of a person, the following information
23 shall be considered as well as other relevant information available at the time the determination is made:

24 (a) 1. ~~Whether~~ ~~[That]~~ the person has ~~[not]~~ been claimed as a dependent on the federal or state

1 tax returns of a parent or other person for the year preceding the date of application for a determination
2 of residency status; or

3 2. ~~Whether~~ ~~[That]~~ the person is no longer claimed by a parent or other person as a dependent
4 or as an exemption for federal and state tax purposes; and

5 (b) ~~Whether~~ ~~[That]~~ the person has financial earnings and resources independent of a person
6 other than an independent spouse necessary to provide for the person's own sustenance.

7 (3) An individual who enrolls at an institution immediately following graduation from high school
8 and remains enrolled shall be presumed to be a dependent person unless the contrary is evident from the
9 information submitted.

10 (4) Domicile may be inferred from the student's permanent address, parent's mailing address, or
11 location of high school of graduation.

12 (5) Marriage to an independent person domiciled in and who is a resident of Kentucky shall be
13 a factor considered by an institution in determining whether a student is dependent or independent.

14 (6) Financial assistance from or a loan made by a parent or family member other than an inde-
15 pendent spouse, if used for sustenance of the student:

16 (a) Shall not be considered in establishing a student as independent; and

17 (b) Shall be a factor in establishing that a student is dependent.

18 Section 6. Effect of a Determination of Dependent ~~for Independent~~ Status on a Determination
19 of Residency Status. (1) The effect of a determination that a person is dependent shall be ~~[as follows]~~:

20 (a) The domicile and residency of a dependent person shall be the same as either parent. The
21 domicile and residency of the parent shall be determined in the same manner as the domicile and resi-
22 dency of an independent person.

23 (b) The domicile and residency of a dependent person whose parents are divorced, separated,
24 or otherwise living apart shall be Kentucky if either parent is domiciled in and is a resident of Kentucky

1 regardless of which parent has legal custody or is entitled to claim that person as a dependent pursuant
2 to ~~federal or~~ Kentucky income tax provisions.

3 (2)(a) ~~{(c)1.}~~ If the parent or parents of a dependent person are Kentucky residents and are
4 domiciled in Kentucky but subsequently move from the state, the dependent person shall be considered
5 a resident of Kentucky while in continuous enrollment at the degree level in which currently enrolled.

6 (b) ~~{2.}~~ If continuous enrollment is broken or the current degree level is completed, the depend-
7 ent person's residency status shall be reassessed when the circumstances detailed in subparagraph 1 of
8 this paragraph are present.

9 ~~{(2) If the sole parent or both parents of a dependent person moves out of state, Kentucky~~
10 ~~domicile and residency, having been previously established, shall be retained until steps are taken to es-~~
11 ~~tablish domicile and residency elsewhere.}~~

12 Section 7. Member of Armed Forces of the United States, Spouse and Dependents; Effect on a
13 Determination of Residency Status. (1) A member, spouse, or dependent of a member whose domicile
14 and residency was Kentucky at the time of induction into the Armed Forces of the United States, and
15 who maintains Kentucky as home of record and permanent address, shall be entitled to Kentucky resi-
16 dency status:

17 (a) During the time of active service; or

18 (b) If the member, spouse, or dependent returns to this state within six (6) months of the date of
19 the member's discharge from active duty.

20 (2)(a) A member, spouse or dependent of a member of the Armed Forces of the United States
21 stationed in Kentucky on active military orders shall be considered a Kentucky resident while the
22 member is on active duty in this state pursuant to those orders if the member is not:

23 1. Stationed in Kentucky for the purpose of enrollment at an institution; or

24 2. On temporary assignment of less than one (1) year.

1 (b) A member, spouse or dependent of a member, shall not lose Kentucky residency status if
2 the member is thereafter transferred on military orders while the member, spouse or dependent request-
3 ing the status is in continuous enrollment at the degree level in which currently enrolled.

4 (3) Membership in the National Guard or civilian employment at a military base alone shall not
5 qualify a person for Kentucky residency status under the provisions of subsections (1) and (2) of this
6 section.

7 (4) A person's residency status established pursuant to this section shall be reassessed if the
8 qualifying condition is terminated.

9 Section 8. Status of Nonresident Aliens; Visas and Immigration. (1)(a) A person holding a per-
10 manent residency visa or classified as a political refugee shall establish domicile and residency in the
11 same manner as another person.

12 (b) Time spent in Kentucky and progress made in fulfilling the conditions of domicile and resi-
13 dency prior to obtaining permanent residency status shall be considered in establishing Kentucky domi-
14 cile and residency.

15 (2) A person holding a nonimmigrant visa with designation A, E, G, ~~H-1, H-4 if accompanying a~~
16 ~~person with an H-1 visa, [H,] I, K, L, N, [O, P,] R, [S, TD or TN]~~ shall establish domicile and resi-
17 dency the same as another person.

18 (3)(a) An independent person holding a nonimmigrant visa with designation B, C, D, F, ~~H-2, H-~~
19 ~~3, H-4 if accompanying a person with an H-2 or H-3 visa, J, K, M, O, P, Q, S, or TD or TN [or]~~
20 shall not be classified as a Kentucky resident, because that person does not have the capacity to remain
21 in Kentucky indefinitely and therefore cannot form the requisite intent necessary to establish domicile
22 within the meaning of this administrative regulation.

23 (b) A dependent person holding a visa as described in paragraph (a) of this subsection, but who
24 is a dependent of a parent holding a visa as described in subsection (2) of this section, shall be consid-

ered as holding the visa of the parent.

(c) A dependent person holding a visa described in subsection (2) of this section or paragraph (a) of this subsection, if a parent is a citizen of the United States and is a resident of and domiciled in Kentucky, shall be a resident of Kentucky for the purposes of this administrative regulation.

~~(4) Provided however, that a dependent or independent person who graduates from a Kentucky high school and who is an undocumented alien; who holds a visa listed in subsections (2) or (3) of this section; or, who is a dependent of a person who holds a visa listed in subsections (2) or (3) of this section shall be a Kentucky resident for the purpose of this administrative regulation.~~

~~(5)(a) A person who has petitioned the federal government to reclassify visa status shall continue to be ineligible until the petition has been decided by the federal government.~~

~~(b) Provided however, a person who has petitioned the federal government to reclassify visa status based on a marriage to a Kentucky resident and who can demonstrate that the petition has been filed and acknowledged by the federal government, may establish Kentucky domicile and residency at that time.~~

Section 9. Beneficiaries of a Kentucky Educational Savings Plan Trust. A beneficiary of a Kentucky Educational Savings Plan Trust shall be granted residency status if the beneficiary meets the requirements of KRS 164A.330(9).

Section 10. Criteria Used in a Determination of Residency Status. (1) A determination of Kentucky domicile and residency shall be based upon verifiable circumstances or actions. A single fact shall not be paramount, and each situation shall be evaluated to identify those facts essential to the determination of domicile and residency.

(2) The following facts, although not conclusive, shall have probative value in their entirety and shall be individually weighted, appropriate to the facts and circumstances in each determination of residency:

1 (a) Acceptance of an offer of full-time employment or transfer to an employer in Kentucky or
2 contiguous area while maintaining residence and domicile in Kentucky;

3 (b) Continuous physical presence in Kentucky while in a nonstudent status for the twelve (12)
4 months immediately preceding the start of the academic term for which a classification of Kentucky
5 residency is sought;

6 (c) 1. Filing of Kentucky resident income tax return for the calendar year preceding the date of
7 application for a change in residency status; or

8 2. Payment of Kentucky withholding taxes while employed during the calendar year for which a
9 change in classification is sought;

10 (d) Full-time employment of at least one (1) year while living in Kentucky;

11 (e) Attendance as a full-time, nonresident student at an out-of-state institution based on a de-
12 termination by that school that the person is a resident of Kentucky;

13 (f) Abandonment of a former domicile or residence and establishing domicile and residency in
14 Kentucky with application to or attendance at an institution following and incidental to the change in
15 domicile and residency;

16 (g) Obtaining licensing or certification for a professional and occupational purpose in Kentucky;

17 (h) Payment of real property taxes in Kentucky;

18 (i) Ownership of real property in Kentucky, if the property was used by the student as a resi-
19 dence preceding the date of application for a determination of residency status;

20 (j) Long-term lease of at least twelve (12) consecutive months of noncollegiate housing;

21 (k) Marriage of an independent student to a person who was domiciled in and a resident of
22 Kentucky prior to the marriage [resident];

23 (l) Continued presence in Kentucky during academic breaks; and

24 (m) The extent to which a student is dependent on student financial aid in order to provide basic

1 sustenance.

2 (3) Except as provided in subsection (4) of this section, the following facts, because of the ease
3 and convenience in completing them, shall have limited probative value in a determination that a person
4 is domiciled in and is a resident of Kentucky:

5 (a) Kentucky automobile registration;

6 (b) Kentucky driver's license; and

7 (c) Registration as a Kentucky voter.

8 (4) The absence of a fact contained in subsection (3) of this section shall have significant proba-
9 tive value in determining that a student is not domiciled in or is not a resident of Kentucky.

10 (5) ~~A person shall not be determined to be a Kentucky resident~~ [Kentucky residency status
11 ~~shall not be conferred~~] by the performance of an act which is incidental to fulfilling an educational pur-
12 pose or by an act [which is] performed as a matter of convenience. Mere physical presence in Ken-
13 tucky, including living with a relative or friend, shall not be sufficient evidence of domicile and residency.
14 A person shall respond to all information requested in subsections (2) and (3) of this section.

15 Section 11. Effect of a Change in Circumstances on Residency Status. (1) If a person becomes
16 independent or if the residency status of a parent or parents of a dependent person changes, an institu-
17 tion shall reassess residency either upon a request by the student or a review initiated by an institution.

18 (2) Upon transfer to a Kentucky institution, a student's residency status shall be ~~assessed~~ [reas-
19 sessed] by the receiving institution.

20 (3) A reconsideration of a determination of residency status for a dependent person shall be
21 subject to the provisions for continuous enrollment, if applicable.

22 Section 12. Student Responsibilities. (1) A student shall ~~report~~ [register] under the proper resi-
23 dency classification which includes the following actions:

24 (a) Raising a question in a timely manner concerning residency classification;

1 (b) Making application for change of residency classification in a timely manner with the design-
2 nated office or person at the institution; and

3 (c) Notifying the designated office or person at the institution immediately upon a change in resi-
4 dency.

5 (2) If a student fails to notify an institutional official of a change in residency, an institutional offi-
6 cial may investigate and evaluate the student's ~~current~~ residency status.

7 (3)(a) If a student fails to provide, by the date specified by the institution, information required
8 by an institution in a determination of residency status, the student shall be notified by the institution that
9 the review has been canceled and that a determination has been made.

10 (b) Notification shall be made by registered mail, return receipt requested.

11 (c) Notification shall be made within ten (10) calendar days after the deadline for receipt of ma-
12 terials has passed.

13 (4) A student shall not be entitled to appeal a determination of residency status if the determina-
14 tion made by an institution is because a student has failed to meet published deadlines for the submission
15 of information as set forth in subsection (3) of this section. A student may request a review of a determi-
16 nation of residency status in a subsequent academic term.

17 Section 13. Institutional Responsibilities. Each institution shall:

18 (1) Provide for an administrative appeals process that includes a residency appeals officer to
19 consider student appeals of an initial residency determination and which shall include a provision of
20 fourteen (14) days for the student to appeal the residency appeals officer's determination.

21 (2) Establish a residency review committee to consider appeals of residency determinations by
22 the residency appeals officer. The residency review committee shall make a determination of student
23 residency status and notify the student in writing within forty-five (45) days after receipt of the student
24 appeal.

(3) Establish a formal hearing process as described in Section 14 of this administrative regulation.

(4) Establish written policies and procedures for administering the responsibilities established in subsections (1), (2), and (3) of this section and that are:

(a) Approved by the institution's governing board;

(b) Made available to all students; and

(c) Filed with the council.

Section 14. Formal Institutional Hearing. (1) A student who appeals a determination of residency by a residency review committee shall be granted a formal hearing by an institution if the request is made by a student in writing within fourteen (14) calendar days after notification of a determination by a residency review committee.

(2) If a request for a formal hearing is received, an institution shall appoint a hearing officer to conduct a formal hearing. The hearing officer:

(a) Shall be a person not involved in determinations of residency at an institution except for formal hearings; and

(b) Shall not be an employee in the same organizational unit as the residency appeals officer.

(3) An institution shall have written procedures for the conduct of a formal hearing that have been adopted by the board of trustees or regents, as appropriate, and that provide for:

(a) A hearing officer to make a recommendation on a residency appeal;

(b) Guarantees of due process to a student that include:

1. The right of a student to be represented by legal counsel; and

2. The right of a student to present information and to present testimony and information in support of a claim of Kentucky residency.

(c) A recommendation to be issued by the hearing officer.

1 (4) An institution's formal hearing procedures shall be filed with the Council on Postsecondary
2 Education and shall be available to a student requesting a formal hearing.

3 Section 15. Cost of Formal Hearings. (1) An institution shall pay the cost for all residency
4 determinations including the cost of a formal hearing.

5 (2) A student shall pay for the cost of all legal representation in support of the student's claim of
6 residency. ~~[(17 Ky.R. 2557, eff. 4-5-91; Am. 22 Ky.R. 1656, 1988, eff. 5-16-96, 23 Ky.R. 3380;~~
7 ~~3797, 4099, eff. 6-16-97; 24 Ky.R. 2136, 2705, 25 Ky.R. 51, eff. 7-13-98, 25 Ky.R. 2177, 2577;~~
8 ~~2827, eff. 6-7-99.)]~~

Sue Hodges Moore
Interim President
Council on Postsecondary Education

Date

APPROVED AS TO FORM:

Dennis L. Taulbee
General Counsel
Council on Postsecondary Education

Date